

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

PREAMBLE

1.

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R20-4-216	New Section
R20-4-332	New Section
R20-4-403	New Section
R20-4-709	New Section
R20-4-927	New Section
R20-4-1813	New Section
R20-4-1912	New Section
2. **The specific authority for the rulemaking, including both the authorizing statutes (general), and the implementing statutes (specific):**

Authorizing statute(s):	A.R.S. §§ 6-110, 6-123(1), 6-123(2), 6-123(3)
Implementing statute(s):	A.R.S. §§ 6-161, 6-181, 6-478 (B), 6-817(A)(8), 6-905(A)(4), 6-945(A)(3), 6-982(A)(3), 13-1802, 23-1361
3. **The effective date of the rules:**
The rules will become effective 60 days after they are filed with the Secretary of State.
4. **A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening, 13 A.A.R. 4332, December 7, 2007
Notice of Proposed Rulemaking, 13.A.A.R. 4292, December 7, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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6. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

These new Sections will require licensee-employers to report on employees terminated for certain specified kinds of misconduct. An employee's termination triggers a duty to report. The new Sections, and the reports they require, give employers valuable protections and will allow them to safely self-police their workforces.

To counteract damaging public reports of illegal conduct in these industries, the regulated community has approached the Department requesting help in creating a way for industries to self-police. The new rules create an avenue for industry to safely share information about employee misconduct and terminations with the Department and with each other. The free exchange of information will prevent dishonest employees from moving from one employer to another when their misconduct is discovered. This, in turn, will protect Arizona consumers. The Department proposes these new Sections because of the regulated community's requests and the existence of A.R.S. § 23-1361.

The rules work together with A.R.S. § 23-1361, a long standing Arizona labor relations statute, which grants privileged status to communications about dishonest employees among banks, credit unions, escrow agents, mortgage brokers, mortgage bankers, commercial mortgage bankers, and the Department. A.R.S. § 23-1361(E). The statute also provides immunity from civil liability for those communications, concerning either employees or prospective employees, if an employer has also reported the information exchanged between companies to the Department of Financial Institutions “. . . pursuant to written rules or policies . . .” A.R.S. § 23-1361(F).

Further, A.R.S. § 23-1361 permits the same financial institutions or enterprises to give employment references detailing an employee’s misconduct if the employer has reported that conduct to the Department of Financial institutions. A.R.S. § 23-1361(G). Finally, the statute grants immunity from civil liability to employers who give such an employment reference. A.R.S. § 23-1361(H).

These new Sections will trigger A.R.S. § 23-1361’s protections because they will require the licensees to report information about errant former employees whose conduct warrants termination. Reportable conduct, under the new Sections is the types described in either A.R.S. § 23-1361 or A.R.S. § 6-161. The latter statute, which authorizes the Superintendent to remove dishonest and unfit employees describes misconduct in different terms than A.R.S. § 23-1361, but both descriptions are included in the new Sections. The new Sections will work with A.R.S. § 23-1361 to provide civil immunity to employers and allow them to eliminate unfit and dishonest employees from these financial services industries.

The new Sections provide the requirement of a report that is the premise of A.R.S. § 23-1361’s protections. The Department’s administrative rules do not currently require these reports,

so it is adopting the new rules to extend §§ 23-1361(E), (F), (G), and (H)'s protections to licensees. The proposed Sections require licensees to report the conduct of those employees terminated for certain misconduct, or for certain suspected misconduct. The inclusion of misconduct the employer "believes is occurring or has occurred" will protect the employer who lawfully terminates an at-will employee whose conduct raises questions about the customers' or the employers' risks in continued employment.

These new Sections, and the existing statutes, give licensees a better chance to self-police and remove the worst actors from the financial services industry. In the past, the Department and licensee-employers have found it difficult to obtain information about employee misconduct. These rules' design will change that.

The new Sections will ease communication and permit licensees to provide each other with protected information, so that bad actors have less chance to move from one unsuspecting employer to the next. The reporting process will also allow the Department to better use its removal power. Together, the new Sections and the existing statutes will better protect Arizona consumers.

The removal process requires some explanation. Since 1973 when the legislature enacted A.R.S. § 6-161, the Superintendent has had the power to remove persons from financial institutions and enterprises for having committed certain forms of misconduct. Information reported under the new Sections is confidential under A.R.S. § 6-129. That confidentiality protects both employees and employers. The Department will investigate matters reported under the new Sections and consider whether to seek removal of the employee. Departmental investigations are also confidential under A.R.S. § 6-129. Any decision to remove a reported

employee will be pursued under A.R.S. § 6-161, which provides for due process to protect the legitimate interests of respondent employees.

7. **A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study, and other supporting material:**

The department did not rely on any study as an evaluator or justification for the rules.

8. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

9. **The summary of the economic, small business, and consumer impact:**

This rulemaking establishes rules that require reports to the Department upon termination of certain licensees' employees for misconduct. Persons who will be directly affected by, bear the cost of, or directly benefit from the rulemaking are:

A. The Department of Financial Institutions

The Department will incur the costs of completing this rulemaking and of putting the new Sections into effect. It expects to receive the offsetting benefits of an open channel of communication with protected licensees about employee misconduct. The Department will then benefit from a regulated industry with a higher quality work force. That will leave the Department better able to protect Arizona consumers.

The Department will also bear the cost of the investigative hours required to process reports of employees terminated for misconduct and to make the decision in each case

whether to seek removal of that employee. The benefit to the Department will accrue over the long term in a smaller, better qualified, and law-abiding workforce in the professions it regulates.

B. Other Public Agencies

The State will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Licensees, both individuals and entities, will bear the compliance cost of compiling and submitting required reports, the cost of periodic supplementation as may be required in individual cases, and the cost of record retention of material reported to the Department. These same businesses will directly benefit from the ability to assist in removal of malefactors from their work force. The long term effect will be to improve the work force, and to reduce the number of consumer complaints. That effect will, in turn, reduce customer dissatisfaction and litigation defense costs for licensees.

Also, the regulated industries will benefit from a reduction in time spent administering fidelity bond claims. There will be less interaction with sureties' personnel and less interaction with other inquiring parties, including other potential employers and members of the general public. This effect will flow from the industries' ability to refer calls about removed employees to this Department's web site where Removal Orders will be posted.

D. Consumers

Consumers are not likely to experience increased cost of services due to compliance costs imposed on licensees by these rules because those costs are marginal. But consumers will also benefit from an improved, more capable, and more trustworthy work force. Capable, honest employees conduct transactions that deliver benefit to customers as

advertised without exposing the customers to financial hazards such as identity theft and mortgage fraud.

E. Private and Public Employment

The Department expects no net negative effect on public or private employment because the number of people removed by investigations and removal orders will be more than offset by other new employees that will not perpetrate misconduct. Overall, the slowing construction and mortgage finance industries have already cost those sectors a number of employees. While that trend will likely continue, it would be difficult if not impossible to accurately predict what fraction of the decrease will be due to economic contraction as opposed to removal actions. The Department believes that most of this effect will be the result of general slowdown in an economy that relies heavily on building, selling, and financing residential real estate.

F. State Revenues

This rulemaking will not change state revenues.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

A. The definition of misconduct has been changed in the final rules. The definition now includes misconduct a licensee “believes is occurring or has occurred.” This change protects a licensee who terminates an employee it suspects of misconduct, and reports the termination to the Department. In that case, and under the language of the proposed rules, an employee could claim the reporting licensee has no immunity for the report or for any related employment reference because the proposed rule required reports of misconduct, but not of suspected misconduct. The final rule’s revisions makes the statutory protections

available to licensees who lawfully terminate employees to protect themselves and their customers without actual proof of misconduct.

B. The time period for supplementing reports made under these rules has been lengthened in the final rules. While the proposed rules mandated a supplemental report within 10 days of the licensee learning new information, the final rules allow 30 days for a supplemental report. This longer period accommodates the reality of the pace that information cycles through an organization, especially a large one.

C. The revised rules require the report to include the names of persons with personal knowledge of the reported misconduct. As originally proposed, these new Sections required the reports to include the names of all persons known to the licensee to have knowledge of the reported misconduct. The list of those names could, in a given case, be large and cumbersome because it would include persons with no more than constructive knowledge gained from reading internal documents.

The purpose of this part of the rule is to reveal the names of witnesses to the Department. The revision to require the names of all persons with personal knowledge more precisely describes the people the Department will want to interview in its investigation.

11. A summary of the comments made regarding the rules and the agency response to them:

A. Preliminary comments and revisions. Before publication of the Notice of Proposed Rulemaking, several industry leaders commented on the rules. As a result, the language has gone through several revisions. These are the issues already addressed in response to industry input before publication of the proposed rules:

1. Persons with knowledge. The earliest version of the rule required the licensee-employer to report all persons who have knowledge of the misconduct. One writer suggested that a licensee should have to report only those persons the reporting licensee knows about. The rule now contains this more feasible reporting duty.

2. Description of records. The same writer pointed out that the rule required the licensee to search for and describe all records evidencing the reported misconduct in the licensee's possession. The suggestion was that the company should only be required to assemble and describe the records it compiles for its own termination investigation.

On the other hand, the Department's interest is in having all pertinent records. The more information the Department has, the greater likelihood it can make a sound decision on whether to seek removal. The current language of these rules balances these competing interests in favor of feasibility and permits supplementation of the licensee's report to include after-acquired or later-discovered information and records.

3. Record retention. It has also been noted that early versions of these rules required the licensee to retain all records of reported misconduct indefinitely and to destroy those records only with the Department's consent. The Sections were modified to remedy the problem of an indefinite retention period. In drafting the modifications, the Department assumed any licensee that fires an employee for the kind of conduct that would trigger a reporting duty would retain its records of any pre-termination investigation at least until the statute of limitations has run on any claims the terminated employee might assert. In the current language the rules state a definite, lengthy retention period. They permit shorter retention with the Department's permission, but obligate the Department not to withhold consent without a reason.

4. Definition of misconduct. Several commentators were bothered by the definition of misconduct in the draft rule, noting that the language of A.R.S. § 23-1361(G) is a more narrow description of misconduct than the broader language of A.R.S. § 6-161(A)(1). How is a licensee-employer to know what misconduct to report? The descriptions in the two statutes are different, but the following two overriding concerns led the department to conclude that the rules must contain a broad definition of "misconduct."

First, A.R.S. § 6-161 gives the department the power and authority to remove persons committing the kinds of misconduct described in that statute. The concern is that, if this rule does not require reports of any and all forms of misconduct that can lead to removal, this rulemaking project will be less effective at achieving the goals contemplated by the legislature when it enacted A.R.S. § 6-161. That statute lists statutory grounds for removal, and the rules that implement it would be less than effective if they did not include all the statutory grounds.

Also, the duty to report stated in the rules is triggered by termination. Other forms of employee discipline are not implicated in the new Sections. The Department believes that if a licensee has done an investigation sufficient to conclude an employee should be terminated, it will also have the information it needs to decide if the employee's misconduct should be reported under any criteria set out in the rules. And in the end, the Department has to make its own determination whether to seek removal of a reported employee. Under the statutes and these rules, a report of misconduct is privileged and cloaked in immunity from suit. Therefore, in its broader form, the rule works in favor of licensees by providing immunity from civil liability.

5. Extent of penalties. One commentator inquired as to the penalty for failure to comply with the rule. Under the authority of A.R.S. § 6-132, the penalty for a person's knowing

failure to comply with any statute, rule, or order adopted or issued under A.R.S. Titles 6, 32, or 44 is a civil money penalty of not more than \$5,000 per violation per day.

6. Reporting forms. A commentator suggested that the Department develop a form to use in making the required reports. This is a welcome suggestion and one the Department believes it has fulfilled by drafting the rule so that it can serve as its own checklist.

7. Employment of removed employees. Another commentator asked how a licensee will know that it is prohibited to employ a given person? For the use of all licensees as well as the general public, the Department's website contains a chart of Final Orders, including a list of all Removal Orders. Each Removal Order is identified by the name of the person removed from the financial services industry. And, each Removal Order is posted as a link so that the full text of the order can be downloaded, printed, or saved by licensees.

8. Privacy and safety. Finally, a concern has been expressed about the privacy and safety of employees identified in reports as persons known to have knowledge of the reported misconduct. Both the privacy and safety concerns are related, and we believe the rule safeguards both interests.

First of all, any information contained in a "report" is confidential in the hands of the Department under A.R.S. § 6-129. Neither the rule nor the statute requires disclosure of the "report" to the accused employee.

The provision of the Labor Code, A.R.S. § 23-1361, deals with employers' communications to the Department that trigger the privileged status of the information conveyed to the Department. Coupled with the confidentiality of the reports in the Department's hands, the employers' privilege protects the witnesses' privacy.

A.R.S. § 23-1361 also deals with “employment references.” As that term is used in the statute, employment references are made by a previous employer to a prospective employer. There is no requirement in the statute that the information conveyed in the employment reference should include the identity of any witnesses or persons with knowledge of the misconduct.

It is true that, as a condition of immunity, A.R.S. § 23-1361(G) requires a previous employer that makes an "employment reference" disclosing reported misconduct to send a copy of the "employment reference" to the applicant in question. But that requirement is only as to the "employment reference." These rules do not affect the contents of "employment references," nor do they require that copies of reports be sent to accused employees. The information shared with the terminated employee need not include witnesses' names, and that circumstance also protects the witnesses' privacy. In this context, all privacy protections also safeguard the witnesses.

B. Comments and revisions since publication of the Proposed Rules. The Department received two written comments after it published the Notice of Proposed Rulemaking. They are described here, along with the Department's responses:

1. Inclusion of suspected misconduct. A commentator noted that an employer might legally and prudently terminate an at-will employee on mere suspicion and then report the termination to the Department. The wording of the proposed rule required a report for “misconduct” but not “suspected misconduct.” The terminated employee could, therefore, contend that the report was not privileged and the employer is not immune because a report of suspected misconduct was not required under the Department's rule. Borrowing a statutory concept from Arizona's insurance law, the commentator recommended the rules require a report of misconduct an employer believes is occurring or has occurred. That language parallels A.R.S.

§ 20-466(G) that requires an insurer to make a report if it believes a fraudulent claim has been or is being made.

The Department responded by changing the definition of misconduct so that it includes misconduct the employer believes is occurring or has occurred.

2. Supplemental reports. Another commentator said her clients thought the 10 day period for supplementing reports was too short, given the rate at which information cycles through a large organization. The Department responded by changing the language of the rules so that a reporting employer is required to supplement within 30 days of learning new information about the reported matter.

3. Persons with knowledge. The same commentator observed that the rules' requirement to disclose the names of every person with knowledge of the reported misconduct would sweep in an unwieldy list of every person in a large organization who had no more than constructive knowledge of misconduct from reading an internal report. The department included this provision in the rules in order to discover the names of witnesses to be interviewed in investigations. For that reason, the Department's response is to revise the proposed rules so that they now require reporting only of persons with personal knowledge. Those are the persons who are competent witnesses.

4. Definition of Employee. The same commentator's clients observe that the language in the definition of employee sweeping in "other persons participating in the conduct of the affairs of the mortgage banker" might be interpreted to require reports about third parties such as escrow agents, title insurers, or appraisers. Seen in that light the definition is too broad, or it is ambiguous.

The Department believes that “persons participating in the conduct of the affairs of” a licensee plainly means persons with power and authority to make business decisions or to contractually obligate the licensee, and only those persons.

In spite of the good faith question as to meaning, the Department has responded that the phrase is statutory language that defines the Superintendent’s power and authority conferred by the legislature. The Department cannot unilaterally narrow or waive any aspect of that power without violating the separation of powers doctrine. As an executive branch agency it is, rather, obligated to execute it because of the legislative grant of power and authority. For that reason, the Department has declined to change this part of the definition.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Any material incorporated by reference and its location in the text:

There is no material incorporated by reference in these final rules.

14. Were the rules previously adopted as emergency rules?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-216. Reports of Employee Misconduct

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-332. Reports of Employee Misconduct

ARTICLE 4. CREDIT UNIONS

R20-4-403. Reports of Employee Misconduct

ARTICLE 7. ESCROW AGENTS

R20-4-709. Reports of Employee Misconduct

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Reports of Employee Misconduct

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Reports of Employee Misconduct

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1912. Reports of Employee Misconduct

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-216. Reports of Employee Misconduct

A. As the term is used in this Section:

1. “Employee” has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the bank.
2. “Misconduct” means any conduct listed in this subsection that a bank believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. Any activity described in 12 U. S. C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;
 - f. Any act, practice, or transaction that in any way would jeopardize the safety and soundness of the bank;
 - g. A theft, as that term is used in A.R.S. § 13-1802, to include:
 - i. An embezzlement;

- ii. A misappropriation;
 - iii. Any other defalcation;
 - h. Any violation of A.R.S. Title 6, Chapters 1 or 2; or
 - i. Any violation of 20 A.A.C. 4, Article 2.
 - B.** In the event a bank terminates an employee for misconduct that a bank believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the bank shall report the employee's misconduct to the Department within 10 days of the employee's termination.
 - C.** The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the bank at the time the report is made. The bank shall supplement its report within 10 days of the bank learning new information.
 - 1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the bank at the time of the report;
 - 2. The capacity in which the employee worked for the reporting bank;
 - 3. The employee's misconduct;
 - 4. The names of all persons known to the bank that have been, or may have been, injured or damaged by the reported misconduct;
 - 5. The employee's last known business and residence addresses;
 - 6. The names of all persons known to the bank to have personal knowledge of the reported misconduct; and
 - 7. A description of all records evidencing the reported misconduct in the bank's possession.
 - D.** A bank shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A bank may request permission to destroy those records earlier, and the

Department's consent shall not be unreasonably withheld. In no event shall a bank destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-214 and the bank's own records retention schedule.

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-332. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the savings and loan;
2. "Misconduct" means any conduct listed in this subsection that a savings and loan believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. Any activity described in 12 U.S.C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;

- f. Any act, practice, or transaction that in any way would jeopardize the safety and soundness of the savings and loan association;
 - g. A theft, as that term is used in A.R.S. § 13-1802, to include:
 - i. An embezzlement;
 - ii. A misappropriation;
 - iii. Any other defalcation;
 - h. Any violation of A.R.S. Title 6 chapter 3; or
 - i. Any violation of 20 A.A.C. 4, Article 3.
- B. In the event a savings and loan association terminates an employee for misconduct that a savings and loan association believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the savings and loan association shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the savings and loan association at the time the report is made. The savings and loan association shall supplement its report within 30 days of the savings and loan association learning new information.
 - 1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the savings and loan association at the time of the report;
 - 2. The capacity in which the employee worked for the reporting savings and loan association;
 - 3. The employee's misconduct;

4. The names of all persons known to the savings and loan association that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known, to the savings and loan association, to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the savings and loan association's possession.

D. A savings and loan association shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A savings and loan association may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a savings and loan association destroy records of reported misconduct described under subsection (C)(7) except in compliance with State law and the savings and loan association's own records retention schedule.

ARTICLE 4. CREDIT UNIONS

R20-4-403. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the credit union;
2. "Misconduct" means any conduct listed in this subsection that a credit union believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;

- c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
- d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
- e. Any activity described in 12 U. S. C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;
- f. Any act, practice, or transaction that in any way would jeopardize the safety and soundness of the credit union;
- g. A theft, as that term is used in A.R.S. § 13-1802, to include:
 - i. An embezzlement;
 - ii. A misappropriation;
 - iii. Any other defalcation;
- h. Any violation of A.R.S. Title 6, chapter 4; or
- i. Any violation of 20, A.A.C. 4, Article 4.

- B.** In the event a credit union terminates an employee for misconduct that a credit union believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the credit union shall report the employee's misconduct to the Department within 30 days of employee's termination.
- C.** The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the credit union at the time the report is made. The credit union shall supplement its report within 30 days of the credit union learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the credit union at the time of the report;
2. The capacity in which the employee worked for the reporting credit union;
3. The employee's misconduct;
4. The names of all persons known to the credit union that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the credit union to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the credit union's possession.

D. A credit union shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A credit union may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a credit union destroy records of reported misconduct described under subsection (C)(7) except in compliance with State law and the credit union's own records retention schedule.

ARTICLE 7. ESCROW AGENTS

R20-4-709. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the escrow agent.

2. “Misconduct” means any conduct listed in this subsection that an escrow agent believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
- a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft, as that term is used in A.R.S. § 13-1802, to include:
 - i. An embezzlement;
 - ii. A misappropriation;
 - iii. Any other defalcation;
 - f. Any violation of A.R.S. Title 6, chapter 7; or
 - g. Any violation of 20 A.A.C. 4, Article 7.

B. In the event an escrow agent terminates an employee for misconduct that an escrow agent believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the escrow agent shall report the employee’s misconduct to the Department within 30 days of the employee’s termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the escrow agent at the time the report is made. The escrow

agent shall supplement its report within 30 days of the escrow agent learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the escrow agent at the time of the report;
2. The capacity in which the employee worked for the reporting escrow agent;
3. The employee's misconduct;
4. The names of all persons known to the escrow agent that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the escrow agent to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the escrow agent's possession.

D. An escrow agent shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. An escrow agent may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall an escrow agent destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-703 and the escrow agent's own records retention schedule.

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Reports of Employee Misconduct

A. As the term is used in this Section:

1. “Employee” has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage broker;
2. “Misconduct” means any conduct listed in this subsection that a mortgage broker believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft, as that term is used in A.R.S. § 13-1802, to include:
 - i. An embezzlement;
 - ii. A misappropriation;
 - iii. Any other defalcation;
 - f. Any violation of A.R.S. Title 6, chapter 9, article 1, or
 - g. Any violation of 20 A.A.C. 4, Article 9.

B. In the event a mortgage broker terminates an employee for misconduct that a mortgage broker believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the mortgage broker shall report the employee’s misconduct to the Department within 30 days of the employee’s termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the mortgage broker at the time the report is made. The mortgage broker shall supplement its report within 30 days of the mortgage broker learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage broker at the time of the report;
2. The capacity in which the employee worked for the reporting mortgage broker;
3. The employee's misconduct;
4. The names of all persons known to the mortgage broker that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the mortgage broker to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the mortgage broker's possession.

D. A mortgage broker shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A mortgage broker may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a mortgage broker destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-917 and the mortgage broker's own records retention schedule.

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Reports of Employee Misconduct

A. As the term is used in this Section:

1. “Employee” has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage banker;
2. “Misconduct” means any conduct listed in this subsection that a mortgage banker believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft, as that term is used in A.R.S. § 13-1802, to include:
 - i. An embezzlement;
 - ii. A misappropriation;
 - iii. Any other defalcation;
 - f. Any violation of A.R.S. Title 6, Chapter 9, Article 2, or
 - g. Any violation of 20 A.A.C. 4, Article 18.

- B.** In the event a mortgage banker terminates an employee for misconduct that a mortgage banker believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the mortgage banker shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C.** The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the mortgage banker at the time the report is made. The mortgage banker shall supplement its report within 30 days of the mortgage banker learning new information.
1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage banker at the time of the report;
 2. The capacity in which the employee worked for the reporting mortgage banker;
 3. The employee's misconduct;
 4. The names of all persons known to the mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the mortgage banker to have personal knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the mortgage banker's possession.
- D.** A mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A mortgage banker may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no

event shall a mortgage banker destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-1806 and the mortgage banker's own records retention schedule.

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1912. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the commercial mortgage banker.
2. "Misconduct" means any conduct listed in this subsection that a commercial mortgage banker believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft, as that term is used in A.R.S. § 13-1802, to include:
 - i. An embezzlement;
 - ii. A misappropriation;
 - iii. Any other defalcation;

f. Any violation of A.R.S.Title 6, Chapter 9, Article 3, or

g. Any violation of Title 20 A.A.C. 4, Article 19.

B. In the event a commercial mortgage banker terminates an employee for misconduct that a commercial mortgage banker believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the commercial mortgage banker shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the commercial mortgage banker at the time the report is made. The commercial mortgage banker shall supplement its report within 30 days of the commercial mortgage banker learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the commercial mortgage banker at the time of the report;
2. The capacity in which the employee worked for the reporting commercial mortgage banker;
3. The employee's misconduct;
4. The names of all persons known to the commercial mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the commercial mortgage banker to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the commercial mortgage banker's possession.

D. A commercial mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A commercial mortgage banker may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a commercial mortgage banker destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-1907 and the commercial mortgage banker's own records retention schedule.